

O'TOOLE SCRIVO
FERNANDEZ WEINER VAN LIEU, LLC
 Joshua A. Zielinski, Esq. (020471999)
 Andrew Gimigliano (016792012)
 14 Village Park Road
 Cedar Grove, New Jersey 07009
 (973) 239-5700
Attorneys for Plaintiff, Mayor Felix E. Roque

FELIX E. ROQUE, in his official capacity as
 MAYOR AND COMMISSIONER OF THE
 TOWN OF WEST NEW YORK,

Plaintiff,

v.

GABRIEL RODRIGUEZ, in his official
 capacity as COMMISSIONER OF THE
 TOWN OF WEST NEW YORK; COSMO A.
 CIRILLO, in his official capacity as
 COMMISSIONER OF THE TOWN OF
 WEST NEW YORK; MARGARITA
 GUZMAN, in her official capacity as
 COMMISSIONER OF THE TOWN OF
 WEST NEW YORK; MICHAEL A.
 JIMENEZ, in his official capacity as
 CORPORATION COUNSEL AND ACTING
 TOWN ADMINISTRATOR OF THE TOWN
 OF WEST NEW YORK,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION
 : HUDSON COUNTY
 : DOCKET NO.: HUD-

: Civil Action

: **COMPLAINT IN LIEU OF PREROGATIVE**
 : **WRITS**

Plaintiff, Felix A. Roque, Mayor and Commissioner (“Mayor Roque”) of the Town of West New York (“Town”), by way of Verified Complaint against Defendants, Town Commissioner Gabriel Rodriguez, Town Commissioner Cosmo A. Cirillo, Town Commissioner Margarita Guzman, and Corporation Counsel and Acting Town Administrator Michael A. Jimenez (collectively “Defendants”), hereby states:

NATURE OF THE ACTION

1) This action seeks to invalidate Defendants' unlawful attempts to reduce and eliminate Mayor Roque's participation in the Town's government despite his duly elected role as Commissioner and Mayor of West New York.

2) Over the past year, Commissioner Rodriguez, the ringleader of the effort to sideline Mayor Roque, along with Commissioners Cirillo and Guzman (collectively the "Rodriguez Commissioners") have engaged in a series of unlawful acts stripping Mayor Roque of the powers granted to him by the Legislature, pursuant to the Walsh Act, for no reason other than to limit his ability to participate in the Town's government as an elected official.

3) This action also seeks to invalidate the appointment of Corporation Counsel, Michael A. Jimenez, as Acting Town Administrator because the appointment creates an impermissible conflict of interest and is part of the Rodriguez Commissioners' coordinated efforts to use the Town's government for their own interests.

4) The Rodriguez Commissioners' abuse of power, and recruitment of the Town's attorney to execute their plan, is most troubling because the Rodriguez Commissioners have elevated their own hunger for power over the ordered, lawful administration of the Town and have sacrificed responsible governance in hopes of securing their own re-election in the upcoming Town election.

5) The actions of the Rodriguez Commissioners and Jimenez violate New Jersey law, and, Mayor Roque, therefore, seeks an order invalidating Defendants' unlawful conduct and declaring the extent of the Town Commissioners' power pursuant to the Walsh Act.

THE PARTIES

6) Plaintiff Felix E. Roque, M.D., is a Commissioner and the Mayor of the Town and the current Commissioner of the Department of Parks and Public Property (“Parks and Public Property”).

7) Defendant Gabriel Rodriguez is a Commissioner of the Town and the current Commissioner of the Department of Public Safety (“Public Safety”).

8) Defendant Cosmo A. Cirillo is a Commissioner of the Town and the current Commissioner of the Department of Public Affairs (“Public Affairs”).

9) Defendant Margarita Guzman is a Commissioner of the Town and the current Commissioner of the Department of Revenue and Finance (“Revenue and Finance”).

10) Defendant Michael A. Jimenez, Esq. is the Town’s Corporation Counsel and Acting Town Administrator.

VENUE

11) Venue is appropriate in Hudson County pursuant to Rule 4:3-2 because this action involves a municipal corporation and public officials of Hudson County, and the causes of action arose in Hudson County.

FACTS COMMON TO ALL COUNTS

A. Commission Form of Government

12) In 1911, the New Jersey Legislature adopted the Walsh Act, N.J.S.A. 40:7-1 et seq.

13) One of the forms of government created by the Walsh Act is the commission form of government.

14) In a commission form of government, a Board of Commissioners (“Board”) has “complete control over the affairs of [the] municipality.” N.J.S.A. 40:72-2.

15) In municipalities of fewer than 12,000 residents, the Board consists of three members, and in municipalities of greater than 12,000 residents, like the Town, the Board consists of five members. N.J.S.A. 40:72-1.

16) Pursuant to the Walsh Act, Board elections take place every four years on the second Tuesday in May. N.J.S.A. 40:75-2.

17) Board elections are subject to the Uniform Nonpartisan Elections Law, which provides that each candidate for commissioner is entitled to include a designation “in not more than six words . . . for the purpose of indicating either an official act or policy to which he is pledged or committed,” but the designation may not indicate a political party. N.J.S.A. 40:45-10.

18) A group of candidates that use the same designation may also request that their names be grouped together, with such grouping referred to as a slate. N.J.S.A. 40:45-10.

19) Each candidate for the Board may run independently, but the designation of a slate indicates that the candidates on the slate are effectively running together.

20) In a commission form of government, the candidates receiving the highest vote totals are elected commissioners. N.J.S.A. 40:45-17.

21) In the Town, therefore, the five candidates receiving the highest vote totals are elected to the Board.

22) Historically, in the Town, candidates on a slate win or lose Board elections as a collective unit.

23) Although the Board is the governing body of the Town in a commission form of government, the executive functions of the municipality are divided among the five commissioners, each of whom oversees one of five statutorily-created departments: (1) Public

Affairs; (2) Revenue and Finance; (3) Public Safety; (4) Public Works; and (5) Parks and Public Property. N.J.S.A. 40:72-4; N.J.S.A. 40:72-6.

24) Generally, the Board, at its annual organizational meeting, assigns subordinate offices and agencies to the statutory departments.

25) The Walsh Act requires the Board to “assign to each department the powers and duties having the greatest relevancy to the subject matter as designated in the name of each respective department and as will result, as nearly as possible, in an equal distribution of powers and duties to each department.” N.J.S.A. 40:72-6.1.

26) Among the five commissioners, one commissioner is chosen to serve as Mayor for the four-year term.

27) The Mayor presides over board meetings and supervises all departments. N.J.S.A. 40:72-10, -11.

28) The Town’s custom is for the elected candidate receiving the most votes to serve as Mayor.

29) Once a commissioner is assigned to a department, the designated commissioner has complete autonomy to run the department, which includes the hiring and firing of personnel within the department, without the interference of the other commissioners.

B. The Government of the Town

30) In 1931, the Town adopted the commission form of government.

31) In 2011, motivated by rising taxes and possible corruption, Mayor Roque, then an unelected citizen, headed a slate challenging then-incumbent Mayor Silverio Vega.

32) Mayor Roque and his slate were victorious, and Mayor Roque was selected to his first term as Mayor.

33) After his election, Mayor Roque was named the Commissioner of Public Safety.

34) The most recent Town Board election was held in May 2015, when Mayor Roque again headed a slate.

35) In the 2015 election, Mayor Roque and his slate, which included Commissioner Susan Colacurcio and the Rodriguez Commissioners, won.

36) Mayor Roque received the most votes in the 2015 election and was designated to his second term as Mayor of the Town.

37) Mayor Roque was again named Commissioner of Public Safety.

38) Colacurcio was named Commissioner of Revenue and Finance; Rodriguez was named the Commissioner of the DPW; Cirillo was named the Commissioner of Public Affairs; and Guzman was named the Commissioner of the Parks and Public Property.

39) The Commissioners also adopted resolutions outlining the powers and duties of the statutory departments and the attendant personnel and facilities assigned to each department.

40) At that time, Revenue and Finance controlled, among other things, finance, accounting, human resources, civil service, pension, tax, insurance, and housing issues.

41) Public Safety controlled, among other things, the police and fire departments, elections, and the Township Administrator.

42) Parks and Public Property controlled, among other things, the Municipal Court, the custody and operation of public grounds, public buildings, public recreation facilities, and related services. Attached hereto as Exhibit A is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on May 19, 2015.

43) From May 2015 until early 2018, the Board worked in a unified fashion to advance the best interests of the Town, with each commissioner running their designated department without interference from other commissioners in accordance with the Walsh Act.

C. The 2018 Hudson County Democratic Party Civil War

44) After nearly three years of unified, responsible governance, the Rodriguez Commissioners launched a campaign of political retribution against Mayor Roque for his choice to support a political candidate in the race for Hudson County Democratic chair.

45) Mayor Roque threw his support behind Brian Stack, a State Senator and Mayor of Union City (“Mayor Stack”).

46) The Rodriguez Commissioners supported Amy DeGise, the daughter of Hudson County Executive Tom DeGise.

47) Those political decisions fractured the alignment of the Board.

48) Since his decision to support Mayor Stack, the Rodriguez Commissioners have sought to exact political retribution against Mayor Roque rather than acting in the best interests of the Town.

49) With the battle lines drawn, the Rodriguez Commissioners have attempted to marginalize Mayor Roque and hurt his chances for re-election in 2019.

50) The Rodriguez Commissioners have used their 3-2 majority over Mayor Roque and Colacurio to punish them for their political choices and to strip them of their powers and responsibilities as elected commissioners of the Town.

51) Lacking the courage to inform the public of their plan, the Rodriguez Commissioners have used surprise and ambush to implement their objectives.

D. The Rodriguez Commissioners Begin to Take Over the Town

52) The Rodriguez Commissioners' first step in taking over the Town and attempting to marginalize Mayor Roque focused on controlling Revenue and Finance—the purse strings of the Town.

53) Rather than place their intended take-over of Revenue and Finance on the agenda, Rodriguez introduced, from the floor, two resolutions to the Consent Agenda during the March 15, 2018 Board meeting. Attached hereto as Exhibit B is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on March 15, 2018.

54) One resolution was to name Rodriguez himself as the head of Revenue and Finance, and the other resolution was to remove Colacurcio from Revenue and Finance and move her to the DPW.

55) The Town's Corporation Counsel advised the Rodriguez Commissioners that the resolutions were unlawful and should not be acted on.

56) Mayor Roque too objected, stating that the resolutions should have been brought to his attention before the meeting.

57) Defying the advice of counsel, Rodriguez and Cirillo insisted on voting on the resolutions and, together with Guzman, adopted the resolutions.

58) Next, at the Board meeting on May 17, 2018, the Board took the seemingly ministerial step of reassigning the Town Administrator to Revenue and Finance.

59) This was done to ensure the Town Administrator reported to Rodriguez. Attached hereto as Exhibit C is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on May 17, 2018. Attached hereto as Exhibit D is a true

and accurate copy of Ordinance #10/18, adopted at the May 17, 2018 meeting of the Board of Commissioners.

60) At the same meeting, the Rodriguez Commissioners targeted the Town's Health Officer (a non-political position), Dr. Gina Miranda Diaz ("Dr. Diaz"), who is the wife of one of Mayor Roque's closest aides, Manny Diaz.

61) Dr. Diaz also served as the Health Officer for the Town of Guttenberg ("Guttenberg").

62) The Rodriguez Commissioners eliminated Dr. Diaz from the Town by entering into shared services agreement with North Bergen. See Exhibit C.

63) Cirillo, who also happened to be the Business Administrator for Guttenberg, recommended that Guttenberg fire Dr. Diaz, and she was fired.

64) Dr. Diaz was removed from her position with the Town for no purpose other than to punish Mayor Roque and his closest aide.¹

65) The following month, in June 2018, the Mayor Stack-Amy DeGise fight came to a head, with Amy DeGise prevailing.

66) Emboldened by that victory, and fueled by their thirst for more power, in the fall of 2018, and in preparation for their 2019 campaign, the Rodriguez Commissioners redoubled their efforts to handcuff Mayor Roque.

67) At the November 28, 2018 Board meeting, Rodriguez, again without the courage to inform the public of his plan, moved five resolutions from the floor, all designed to grab power for himself. Attached hereto as Exhibit E is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on November 28, 2018.

¹ Dr. Diaz's removal from both offices is the subject of a pending civil rights lawsuit, bearing Docket No. HUD-L2393-18.

68) The Rodriguez Commissioners removed Mayor Roque from Public Safety and replaced him with Rodriguez, placing Rodriguez in his third department within one year.

69) Rather than simply switching assignments and moving Mayor Roque to Revenue and Finance, the Rodriguez Commissioners moved Guzman into Revenue and Finance and reassigned Mayor Roque to Parks and Public Property.

70) Rodriguez took Public Safety for no reason other than he wanted it for himself.

71) When Rodriguez made his plan known, Mayor Roque made a statement, commenting on how honored he was to have been the commissioner serving over the police department for nearly eight years, and he expressed his distaste that Rodriguez was playing politics with the Town's services.

72) Rodriguez, tipping his hand, stated that the police department "does a phenomenal job which is all the reason why he [Rodriguez] would like to be the Commissioner of Public Safety."

73) During the public comments portion of the meeting, the PBA President made a statement, thanking Mayor Roque for his support and everything he had done for the PBA and adding that he did not understand the reason for the change of commissioners (though he was sure there was some reason behind it).

74) With the police department doing a "phenomenal job" under Mayor Roque's stewardship, Rodriguez offered no real reason for the change other than he wanted it and had the votes to take it, regardless of the best interests of the Town.

75) The Commissioners also reorganized the Town's departments by allowing Guzman to take the Division of Cultural Affairs away from Parks and Public Property and bring it with her to Revenue and Finance for no apparent reason.

76) At the December 19, 2018 Board meeting, the Rodriguez Commissioners continued to attack Mayor Roque by moving resolutions from the floor intended to further gut his department and strip him of his ability to govern.

77) This time, it was Guzman's turn to legislate by ambush, handing the Clerk a resolution to add to the agenda as the Board prepared to enter Executive Session.

78) That resolution moved the Municipal Court from Mayor Roque's department, Parks and Public Property, to Guzman's department, Revenue and Finance. Attached hereto as Exhibit F is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on December 19, 2018.

79) The Rodriguez Commissioners announced no justification or public benefit for moving the Municipal Court out of Public Property, just as they announced no justification or public benefit for moving Cultural Affairs out of Public Property.

80) The only justification offered by Guzman is that she wanted it for herself—a thinly veiled pretext for further draining Mayor Roque's department and responsibilities.

81) The Rodriguez Commissioners' purpose for their actions was to marginalize Mayor Roque and his responsibilities by emptying Parks and Public Property of its divisions and employees and packing Revenue and Finance, headed by Guzman, with additional divisions and employees.

82) In sum, by December 2018, the Rodriguez Commissioners had attempted to render Mayor Roque a commissioner in name only to punish him for politically opposing the DeGise family and with an eye on their own re-election.

E. The “Long Form”

83) At the same time they were tying Mayor Roque’s hands, the Rodriguez Commissioners advanced their own agendas through personnel hires while blocking Mayor Roque from appropriately and effectively staffing Parks and Public Property.

84) Prior to the Rodriguez Commissioners’ 2018 power grab, the Town consistently approved hiring by the commissioners within their designated departments, subject only to the availability of funding within the department’s budget, and without any interference by other commissioners, the Town Administrator, or the Corporation Counsel.

85) After the Rodriguez Commissioners power grab, that all changed.

86) At the April 19, 2018 Board meeting, the Board made again what seemed to be a ministerial move, adopting a resolution modifying the use of a “Long Form” when hiring an employee, increasing an employee’s salary, or transitioning an employee from part-time to full-time status.

87) The new Long Form was required to be signed by the commissioner initiating the request, the Commissioner of Revenue and Finance, the Town Administrator, and the Chief Municipal Financial Officer. Attached hereto as Exhibit G is a true and accurate copy of the relevant portion of the public minutes of the Board of Commissioners meeting held on April 19, 2018.

88) Pursuant to the Walsh Act, a commissioner has sole discretion to hire or fire within his department if the funds are available in the department’s budget.

89) The Long Form’s signature requirement, therefore, should have amounted to nothing more than a rubber stamp.

90) Unbeknownst to Mayor Roque, the Rodriguez Commissioners decided to weaponized the Long Form by withholding signatures, effectively making whoever controlled Revenue and Finance the unelected ruler of the Town by vesting that commissioner (currently Guzman) with the authority to approve or not approve the hiring of an employee, a change to an employee's salary, or the transfer of an employee—regardless of which department or commissioner had the true authority to make the employment decision.

91) By including the Town Administrator's signature on the Long Form, the Rodriguez Commissioners opened up the possibility of a second signature they could control if they could recruit someone to facilitate their plan.

F. Mayor Roque's Attempts to Staff Public Property

92) After his reassignment to Public Property, Mayor Roque sought to hire James Darley to the position of clerk.

93) On November 28, 2018, the Town Administrator, Jamie Cryan, notified Mayor Roque that "Darley seems like a very capable and intelligent individual" and that they could discuss Darley's hire. Attached hereto as Exhibit H is a true and accurate copy of the November 28, 2018 e-mail from Jamie Cryan to Mayor Roque.

94) Darley's Long Form was submitted, but when Darley arrived to have his paperwork finalized by the Town Administrator, he was continually and strategically avoided by the Town Administrator, who was under the authority at that time of Guzman.

95) Mayor Roque's requests to hire Darley were rebuffed time and time again, each time with a different excuse.

96) On December 20, 2018, Mayor Roque followed up with Human Resources regarding the status of Darley's hire. Attached hereto as Exhibit I is a true and accurate copy of the December 20, 2018 e-mail from Mayor Roque to Human Resources.

97) On December 21, 2018, Mayor Roque received a response from the Town's Corporation Counsel notifying him that he had not seen Darley's Long Form.

98) Corporation Counsel stated: "If the proper forms have been filed on Mr. Darley . . . and if the funds are available for his position in the Department of Parks and Public Property then he should be hired immediately as well. If funds are not available, the Commissioner may reallocate the resources within his department to find the f[u]nds to hire either or both of these people." See Exhibit I.

99) Corporation Counsel added that if the funds were not available, Mayor Roque could request additional funds be allocated to his budget to facilitate the hire. See Exhibit I.

100) On or around December 21, 2018, Mayor Roque resubmitted Darley's Long Form, even though his Long Form had previously been completed and submitted. Attached hereto as Exhibit J is a true and accurate copy of Darley's Long Form.

101) Mayor Roque then sent follow-up e-mails to Human Resources on January 2 and 3, 2019, with no response.

102) On January 4, 2019, Mayor Roque sent yet another follow-up e-mail to the Commissioner of Revenue and Finance, Guzman, asking her to sign Darley's Long Form, even offering to deliver the Long Form to her place of work so she could sign it. Attached hereto as Exhibit K is a true and accurate copy of the January 4, 2019 e-mail from Mayor Roque to Guzman.

103) The same day, the Town's newly appointed Corporation Counsel, Defendant Michael Jimenez, sent an e-mail to, among others, Mayor Roque and Guzman reiterating the Town's former Corporation Counsel's December 21, 2018 e-mail.

104) Largely copying and pasting the former Corporation Counsel's e-mail, Jimenez stated about Darley: "[I]f the funds are available for his position in the Department of Parks and Public Property, then he should be hired. . . . If funds are not available, the Commissioner may reallocate the resources within his department to find the f[u]nds to hire [Darley]." Attached hereto as Exhibit L is a true and accurate copy of the January 4, 2019 e-mail from Michael Jimenez.

105) After receiving counsel from Jimenez that he could hire Darley, Mayor Roque sent follow-up e-mails to Guzman on January 8 and 9, 2019.

106) Mayor Roque reminded Guzman that his office was short-staffed and that the application had been pending for nearly two months, offering again to deliver the Long Form to her for signature. Attached here at Exhibit M are true and accurate copies of the January 8 and 9, 2019 e-mails from Mayor Roque to Guzman.

107) Notwithstanding Mayor Roque's authority to hire Darley without the approval of any other commissioner or Town employee, which was confirmed by the legal advice of two successive Corporation Counsels, Guzman thwarted Mayor Roque and refused to sign Darley's Long Form—even though her signature was, effectively, a rubber stamp.

108) On January 15, 2019, Mayor Roque again followed up on his request to hire Darley, explaining that there were adequate funds in his departmental budget.

109) In response, Mayor Roque was told that Darley's proposed salary of \$45,000 had to be confirmed as "within range." Attached hereto as Exhibit N is a true and accurate copy of the January 15, 2019 e-mail.

110) The salary range for a “clerk” under the Town of West New York’s salary ordinance is between \$16,714 and \$115,000.

111) Again, Defendant Guzman refused to sign off on Darley’s hire, despite the submission of the Long Form, the presence of adequate departmental funds for the hire, and the proposed salary falling within the authorized salary for clerks in the Town.

G. Interim Appointment of Michael Jimenez as Town Administrator

112) As the current Corporation Counsel, appointed at the November 28, 2018 Board meeting, Jimenez is responsible for representing the Town in all legal matters in which the Town or members of the governing body have an interest or are parties.

113) Jimenez is also responsible as Corporation Counsel for rendering any and all legal services required of him by the Town or members of the governing body. Attached hereto as Exhibit O is a true and accurate copy of the Town ordinance governing the Corporation Counsel.

114) The position of Town Administrator also is governed by ordinance.

115) Unlike Corporation Counsel, however, which acts independently and does not fall within a statutorily authorized department, the Town Administrator falls under the direction of the director of Revenue and Finance (Guzman).

116) The most recent duly appointed Town Administrator was Jamie Cryan.

117) As Administrator, Cryan was the chief executive and administrative officer of the Town and was responsible for the administration of all of the Town’s affairs.

118) In addition to handling all personnel matters, Cryan was responsible for all operational and implementation decisions consistent with Town policies and was charged with administering and enforcing Board policies, including by promulgating necessary rules and regulations.

119) In his time as Town Administrator, the Board, through numerous resolutions, directly charged Cryan with significant responsibilities.

120) On December 19, 2018, Cryan announced his resignation.

121) On January 4, 2019, Mayor Roque recommended to the Board that the Town appoint Carmela Riccie, the Town Clerk, as Acting Town Administrator.

122) Mayor Roque recommended that the Board appoint Riccie as Acting Town Administrator without increasing her salary to ensure it is was a fiscally neutral move. Attached hereto as Exhibit P is a true and accurate copy of Mayor Roque's January 4, 2019 e-mail.

123) Instead of replacing Cryan, with Riccie, a long-time Town employee, on January 10, 2019, Guzman unilaterally reassigned the Town Administrator's responsibilities to Corporation Counsel Jimenez and Human Resources Clerk Kelly Schweitzer, noting that Jimenez would "assist with completing the day to day duties of the Town Administrator" while Schweitzer would handle personnel matters. Attached hereto as Exhibit Q is a true and accurate copy of the January 10, 2019 e-mail from Guzman appointing Jimenez as Acting Town Administrator.

124) Defendant Jimenez accepted the position stating that he "look[ed] forward to serving you in this capacity, aside from my duties as Corporation Counsel." See Exhibit Q.

125) As acting Town Administrator, Jimenez is no longer the Town's independent Corporation Counsel.

126) Instead, he is compromised by his dual role because as Acting Town Administrator he is beholden to Guzman.

127) Upon learning that Jimenez accepted Guzman's appointment, Mayor Roque notified Town Administrator Jimenez of the conflict of interest he created by accepting the role of

Acting Town Administrator while serving a Corporation Counsel and demanded that Jimenez step down as Acting Town Administrator.

128) Specifically, Mayor Roque notified Town Administrator Jimenez that his “agreement to serve in a dual role as Corporation Counsel and Town Administrator creates an impermissible conflict of interest that is prohibited by the Supreme Court of New Jersey.” Attached hereto as Exhibit R is a true and accurate copy of the January 20, 2019 e-mail from Mayor Roque.

129) Jimenez refused to step down as Acting Town Administrator.

130) Instead, he reiterated that he would “assist with the duties typically handled by the Town Administrator” and that he would do so under the terms of his current contract as Corporation Counsel. See Exhibit R.

131) Jimenez also stated that Mayor Roque’s “concerns [were] unfounded and based on no legal authority” and cautioned Mayor Roque “from taking incorrect legal advice from unlicensed and/or disbarred attorneys.” See Exhibit R.

132) Jimenez also claimed that he would not, as Acting Town Administrator, handle any personnel matters. See Exhibit R.

133) That, however, proved not to be true as it became clear that the Rodriguez Commissioners had recruited Jimenez to intercede as Town Administrator in hiring matters.

134) Specifically, on January 12, 2019, Jimenez signed a Long Form, whiting out Administrator and hand writing Attorney, apparently signing as Acting Town Administrator while purporting to sign as Town Attorney. Attached hereto as Exhibit S is a true and accurate copy of the Long Form signed by Jimenez on January 12, 2019.

135) With Jimenez's judgment compromised, Mayor Roque took action, filing a complaint pursuant to the Local Government Ethics Law with the Local Finance Board. Attached hereto as Exhibit T is a true and accurate copy of the complaint filed by Mayor Roque with the Local Finance Board.

136) Jimenez filed a response claiming that "[h]is assignment [to the day-to-day duties of Town Administrator] was and remains consistent with his role as Corporation Counsel for the Town[,] and Commissioner Guzman makes all final decisions with regard to the Office of Town Administrator." Attached hereto as Exhibit U is a true and accurate copy of Jimenez's response filed with the Local Finance Board.

137) Jimenez also stated that he "acts and has acted only as Corporation Counsel for the Town, the only position he holds." See Exhibit U.

138) Jimenez did not reveal to the Local Finance Board that he altered a Long Form and signed it.

139) After being put on notice of his violations, Jimenez stopped signing Long Forms, and three hires were made without any "Town Administrator" signature, with two forms whiting out that space entirely. Attached hereto as Exhibit V are true and accurate copies of the Long Forms processed without the Town Administrator signature.

140) Nevertheless, Jimenez has been acted as both Corporation Counsel and Acting Town Administrator.

141) As Acting Town Administrator, Jimenez cannot provide independent legal advice to Mayor Roque or the governing body due to his conflicting role as Acting Town Administrator, which is subservient to Guzman, and the Board cannot obtain independent legal advice from Corporation Counsel Jimenez about his actions as Acting Town Administrator Jimenez.

142) Indeed, Jimenez's independent judgment has already been compromised.

143) For example, Corporation Counsel Jimenez provided Mayor Roque with legal advice in early January 2019 that he could hire Darley as long as funds were available, but on February 13, 2019, Acting Town Administrator Jimenez enforced Guzman's agenda by allowing Guzman to block Mayor Roque's hire of Darley.

H. The Rodriguez Commissioners Announce Their Slate

144) On or about January 14, 2019, the Rodriguez Commissioners announced that they would be running on a slate with Victor Barrera and Yoleisy Yanez to challenge Mayor Roque.

145) In addition to manipulating the Town's form of government to advance their political prospects, the Rodriguez Commissioner's also began using Town resources to support their campaign.

146) For example, the Rodriguez Commissioners have used the Town seal and Town social media accounts to market one of their campaign events. Attached hereto as Exhibit W is a true and accurate copy of the Rodriguez Commissioners' political advertisement.

147) In addition, Guzman has repeatedly used an official Town social media account to promote the new slate by posting photographs of herself with Rodriguez and Cirillo and the slate's campaign slogan. Attached hereto as Exhibit X are true and accurate copies of postings from the Town of West New York Department of Cultural Affairs Instagram account.

I. The Rodriguez Commissioners Implement a Hiring Freeze

148) As a final step in handcuffing Mayor Roque before the May 2019 election, and even though the Rodriguez Commissioners had already manipulated the Long Form process to control all personnel moves within the Town, the Rodriguez Commissioners adopted a resolution to institute a hiring freeze.

149) At the time of the hiring freeze, Mayor Roque had at least two outstanding requests to hire and two outstanding requests for salary increases pending Guzman's "approval" and Long Form signature.

150) On February 13, 2019, Jimenez, acting as either Corporation Counsel or Acting Town Administrator, notified Mayor Roque that no new hires or salary increases would be processed until the 2019 budget was approved. See Exhibit R.

151) On February 20, 2019, the Rodriguez Commissioners adopted a resolution authorizing a hiring freeze ("Hiring Freeze Resolution") until the 2019 budget is finalized and approved.

152) This year, the Town's budget is not required to be adopted until April 30, 2019, or shortly thereafter.

153) The current Board term is set to expire on May 21, 2019, one week after the election scheduled for May 14, 2019.

154) In other words, the hiring freeze is designed to prevent Mayor Roque from hiring any staff until after the May 2019 election—with the clear goal of weakening Mayor Roque and his department during election season.

COUNT ONE
(The Hiring Freeze Resolution Is Ultra Vires)

155) Plaintiff repeats and restates each of the foregoing paragraphs as if set forth at length herein.

156) The Hiring Freeze Resolution purports that the "Town seeks to control spending and to run an efficient and responsible municipality that stays within the budget established."

157) The Hiring Freeze Resolution seeks to "impose an immediate hiring freeze for all Town employees until such time as the 2019 budget is finalized and approved."

158) Pursuant to the Walsh Act, each Town commissioner is empowered to run his or her assigned department, including hiring and firing of department employees.

159) Indeed, as two successive Corporation Counsels advised, a commissioner can hire as long as funds are available in the department's budget.

160) The Hiring Freeze Resolution, therefore, unlawfully attempts to curtail individual commissioner power to run his or her assigned department in violation of the Walsh Act.

161) The Hiring Freeze Resolution is ultra vires and void.

WHEREFORE Plaintiff demands final judgment:

- a. Declaring that the power to hire within a department is vested in the commissioner assigned to that department;
- b. Declaring that the Board of Commissioners does not have the power to limit the hiring of a departmental employee approved by the commissioner who oversees that department;
- c. Declaring that the Hiring Freeze Resolution is arbitrary, capricious, and unreasonable and null, void, and of no force and effect;
- d. Attorneys' Fees;
- e. Costs of Suit; and
- f. Any other relief that this Court deems equitable and just.

COUNT TWO
(Declaratory Judgment)

162) Plaintiff repeats and restates each of the foregoing paragraphs as if set forth at length herein.

163) The New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50, et seq., authorizes courts to declare rights, status, and other legal relations pursuant to a statute to afford litigants relief from uncertainty and insecurity.

164) Pursuant to the Declaratory Judgment Act, a declaratory judgment is appropriate where the judgment will terminate the controversy or remove an uncertainty.

165) Pursuant to the Declaratory Judgment Act, a true and actual dispute exists between Plaintiff and Defendants as to the scope of the powers of the Commissioners and the Board of Commissioners pursuant to the Walsh Act.

166) The Walsh Act vests each Commissioner with full control over the hiring of employees within the department to which that Commissioner has been assigned, subject only to the availability of funds within the department as a whole.

167) Defendants have acted in violation of the Walsh Act by withholding Long Form signatures to prevent lawful hiring.

168) Defendants have acted in violation of the Walsh Act by attempting to limit hiring powers expressly reserved to Plaintiff.

WHEREFORE Plaintiff demands final judgment:

- g. Declaring that the power to hire within a department is vested in the commissioner assigned to that department;
- h. Declaring that the Board of Commissioners does not have the power to limit the hiring of a departmental employee approved by the commissioner that oversees that department;
- i. Attorneys' Fees;
- j. Costs of Suit; and
- k. Any other relief that this Court deems equitable and just.

COUNT THREE
(Declaratory Judgment)

169) Plaintiff repeats and restates each of the foregoing paragraphs as if set forth at length herein.

170) The New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq., authorizes courts to declare rights, status, and other legal relations pursuant to a statute to afford litigants relief from uncertainty and insecurity.

171) Pursuant to the Declaratory Judgment Act, a declaratory judgment is appropriate where the judgment will terminate the controversy or remove an uncertainty.

172) Pursuant to the Declaratory Judgment Act, a true and actual dispute exists between Plaintiff and Defendants as to whether the Corporation Counsel can simultaneously act as Town Administrator.

173) Pursuant to the Local Government Ethics Law, “No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independent judgment in the exercise of his official duties.” N.J.S.A. 40A:9-22.5.

174) Town Attorney is a government officer under the Local Government Ethics Law.

175) The Town Attorney is prohibited from simultaneously acting as Town Administrator, because his services as Town Administrator “might reasonably be expected to prejudice his independent judgment in the exercise of his official duties.” N.J.S.A. 40A:9-22.5

WHEREFORE Plaintiff demands final judgment:

- a. Declaring that is it a conflict of interest for the Corporation Counsel to simultaneously act as Town Administrator;
- b. Declaring that is it a conflict of interest for the Corporation Counsel to simultaneously perform services of the Town Administrator;
- c. Attorneys’ Fees;
- d. Costs of Suit; and
- e. Any other relief that this Court deems equitable and just.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that to the best of my information, knowledge, and belief that the matter in controversy is not the subject of any other civil action pending in any court or of a pending civil arbitration proceedings, that no other civil action or arbitration proceedings is contemplated, and I am not aware of any other person who should be joined in this matter at this time.

CERTIFICATION PURSUANT TO RULE 1:38-7(b)

I certify that confidential personal identifiers have been redacted from all documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

O'TOOLE SCRIVO
FERNANDEZ WEINER VAN LIEU, LLC
Attorneys for Plaintiff, Mayor Felix E. Roque

By: /s/ Joshua A. Zielinski
Joshua A. Zielinski

Dated: February 26, 2019